

**UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA—NORFOLK DIVISION**

TIMOTHY B. BOSTIC,

TONY C. LONDON,

CAROL SCHALL, and

MARY TOWNLEY,

Plaintiffs,

v.

CASE NO. 2:13-cv-395

JANET M. RAINEY, in her official
capacity as State Registrar of Vital Records, and

GEORGE E. SCHAEFER, III, in his official
capacity as the Clerk of Court
for Norfolk Circuit Court,

Defendants.

NOTICE OF SUPPLEMENTAL AUTHORITY

In further support of their motion for summary judgment, and in further opposition to Defendants' cross-motions for summary judgment, Plaintiffs Timothy B. Bostic, Tony C. London, Carol Schall, and Mary Townley respectfully submit as supplemental authority the recent decision in *SmithKline Beecham Corp. v. Abbott Labs.*, ___ F.3d ___, 2014 WL 211807 (9th Cir. Jan. 21, 2014). In *SmithKline*, the Ninth Circuit Court of Appeals held that the Supreme Court's decision in *United States v. Windsor*, 133 S. Ct. 2675 (2013), "requires that heightened scrutiny be applied to equal protection claims involving sexual orientation." 2014 WL 211807, at *6. A copy of the decision is attached.

This supplemental authority supports Plaintiffs' argument that Virginia's Marriage Prohibition is subject to heightened scrutiny because it discriminates against Plaintiffs on the basis of their sexual orientation. Argument on this issue is found at pages 15–21 of Plaintiffs' initial brief in support of their motion for summary judgment, and at pages 4–7 of Plaintiffs' reply brief in further support of their motion. Argument on this issue is also found at pages 9–11 of Plaintiffs' opposition to Defendants' cross-motions for summary judgment.

Dated: January 22, 2014

Respectfully submitted,

/s/ Charles B. Lustig
Thomas B. Shuttleworth, VSB # 13330
tshuttleworth@srgslaw.com
Robert E. Ruloff, VSB # 13471
rruloff@srgslaw.com
Charles B. Lustig, VSB # 29442
clustig@srgslaw.com
Andrew M. Hendrick, VSB # 42852
ahendrick@srgslaw.com
Erik C. Porcaro, VSB # 84793
eporcaro@srgslaw.com
SHUTTLEWORTH, RULOFF, SWAIN,
HADDAD & MORECOCK, P.C.
4525 South Blvd., Suite 300
Virginia Beach, VA 23452
T: (757) 671-6000
F: (757) 671-6004

David Boies, *admitted pro hac vice*
dboies@bsfllp.com
BOIES, SCHILLER & FLEXNER LLP
333 Main St.
Armonk, NY 10504
T: (914) 749-8200
F: (914) 749-8300

Robert B. Silver, *admitted pro hac vice*
rsilver@bsfllp.com
Joshua I. Schiller, *admitted pro hac vice*
jischiller@bsfllp.com
BOIES, SCHILLER & FLEXNER LLP
575 Lexington Avenue

Theodore B. Olson, *admitted pro hac vice*
tolson@gibsondunn.com
Matthew D. McGill, *admitted pro hac vice*
mmcgill@gibsondunn.com
Amir C. Tayrani, *admitted pro hac vice*
atayrani@gibsondunn.com
Chantale Fiebig, *admitted pro hac vice*
cfiebig@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
T: (202) 955-8668
F: (202) 467-0539

New York, NY 10022
T: (212) 446-2300
F: (914) 446-2350

William A. Isaacson, *admitted pro hac vice*
wisaacson@bsflp.com
BOIES, SCHILLER & FLEXNER LLP
5301 Wisconsin Avenue, N.W.
Washington, D.C. 20015
T: (202) 237-2727
F: (202) 237-6131

Jeremy M. Goldman, *admitted pro hac vice*
jgoldman@bsflp.com
BOIES, SCHILLER & FLEXNER LLP
1999 Harrison Street, Suite 900
Oakland, CA 94612
T: (510) 874-1000
F: (510) 874-1460

Counsel for Plaintiffs

Theodore J. Boutrous, Jr., *admitted pro hac vice*
tboutrous@gibsondunn.com
Joshua S. Lipshutz, *admitted pro hac vice*
jlipshutz@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
T: (213) 229-7000
F: (213) 229-7520

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of January, 2014, I electronically filed the foregoing Notice of Supplemental Authority with the Clerk of the Court using the CM/ECF system which will send electronic notification of such filing to Byron J. Babione, Esq., Kenneth J. Connelly, Esq., J. Caleb C. Dalton, Esq., Jordan W. Lorence, Esq., and M. Casey Mattox, Esq., Counsel for Proposed Intervenor McQuigg; to Michael H. Brady, Esq., Counsel for Defendant Rainey; and to David B. Oakley, Esq., Counsel for Defendant Schaefer.

Respectfully submitted,

/s/ Charles B. Lustig

Thomas B. Shuttleworth, VSB # 13330

tshuttleworth@srgslaw.com

Robert E. Ruloff, VSB # 13471

rruloff@srgslaw.com

Charles B. Lustig, VSB # 29442

clustig@srgslaw.com

Andrew M. Hendrick, VSB # 42852

ahendrick@srgslaw.com

Erik C. Porcaro, VSB # 84793

eporcaro@srgslaw.com

SHUTTLEWORTH, RUOFF, SWAIN,

HADDAD & MORECOCK, P.C.

4525 South Blvd., Suite 300

Virginia Beach, VA 23452

T: (757) 671-6000

F: (757) 671-6004

David Boies, *admitted pro hac vice*

dboies@bsfllp.com

BOIES, SCHILLER & FLEXNER LLP

333 Main St.

Armonk, NY 10504

T: (914) 749-8200

F: (914) 749-8300

Robert B. Silver, *admitted pro hac vice*

rsilver@bsfllp.com

Theodore B. Olson, *admitted pro hac vice*

tolson@gibsondunn.com

Matthew D. McGill, *admitted pro hac vice*

mmcgill@gibsondunn.com

Amir C. Tayrani, *admitted pro hac vice*

atayrani@gibsondunn.com

Chantale Fiebig, *admitted pro hac vice*

cfiebig@gibsondunn.com

GIBSON, DUNN & CRUTCHER LLP

1050 Connecticut Avenue, N.W.

Joshua I. Schiller, *admitted pro hac vice*
jischiller@bsfllp.com
BOIES, SCHILLER & FLEXNER LLP
575 Lexington Avenue
New York, NY 10022
T: (212) 446-2300
F: (914) 446-2350

William A. Isaacson, *admitted pro hac vice*
wisaacson@bsfllp.com
BOIES, SCHILLER & FLEXNER LLP
5301 Wisconsin Avenue, N.W.
Washington, D.C. 20015
T: (202)237-2727
F: (202)237-6131

Jeremy M. Goldman, *admitted pro hac vice*
jgoldman@bsfllp.com
BOIES, SCHILLER & FLEXNER LLP
1999 Harrison Street, Suite 900
Oakland, CA 94612
T: (510) 874-1000
F: (510)874-1460

Counsel for Plaintiffs

Washington, D.C. 20036
T: (202) 955-8668
F: (202) 467-0539

Theodore J. Boutrous, Jr., *admitted pro hac vice*
tboutrous@gibsondunn.com
Joshua S. Lipshutz, *admitted pro hac vice*
jlipshutz@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
T: (213) 229-7000
F: (213) 229-7520

Counsel for Plaintiffs